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File No. 09-03784

5 Attorneys for Secured Creditor,
6 BANK OF AMERICA, NA, SUCCESSOR BY MERGER WITH COUNTRYWIDE BANK,
NA, FKA TREASURY BANK
7

8 UNITED STATES BANKRUPTCY COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 In re:

12 BENYAM MULUGETA and PAULA R.
MULUGETA *dba* MULUGETA
13 DEVELOPMENT,

14 Debtors.
15

Case No.: 09-51900 AW
Chapter 11

Hearing –

Date: May 23, 2013

Time: 2:00 P.M.

Place: U.S. BANKRUPTCY COURT
280 South First Street
San Jose, CA 95113
Courtroom 3020

16 **SECURED CREDITOR'S LIMITED OBJECTIONS TO APPROVAL OF DEBTOR'S**
17 **AMENDED COMBINED DISCLOSURE STATEMENT AND PLAN**

18 COMES NOW, BANK OF AMERICA, NA, SUCCESSOR BY MERGER WITH
19 COUNTRYWIDE BANK, NA, FKA TREASURY BANK, a Secured Creditor and in the above-
20 entitled Bankruptcy proceeding and a Class 1aa creditor ("Objecting Secured Creditor") pursuant
21 to the Debtors' Amended Combined Disclosure Statement ("Disclosure Statement") and Plan
22 ("Plan") filed on April 17, 2013 as docket entry no. 778 and submits the following Objections to
23 approval of the Amended Combined Disclosure Statement and Plan based on the following:

24 ///

1 Secured Creditor filed a Proof of Claim on April 23, 2009 as Claim #14, setting forth a
2 total secured claim in the amount of \$361,877.41 with arrears of \$14,965.70. In accordance with
3 F.R. Bankr. P. 4001(f) the claim is *prima facie* evidence of the claim. The Debtors have not
4 maintained post-petition payments on the secured claim and the Class 1aa Secured Creditor has
5 been required to make post-petition advances for insurance. Secured Creditor obtained an order
6 approving a stipulation for relief from stay as to its collateral in January of 2012. Secured
7 Creditor has not foreclosed.

8 The description of the Class 1aa treatment in the Plan is as follows:

9 **Class 1aa – Ocwen Loan Servicing:** Surrender of Brann is without prejudice to
10 Debtors' attempt to negotiate a "short sale." The confirmation order will
11 constitute an order for relief from stay. Any secured claim is satisfied in full
12 through surrender of the collateral. Any deficiency claim is a general unsecured
claim treated in Part 2. Creditors in these classes shall retain their interest in the
collateral. These secured claims are not impaired and are not entitled to vote on
confirmation of the Plan.

13 The treatment proposed in Class 1aa is not objectionable if limited to surrender and relief,
14 but Secured Creditor objects to the ambiguity that is introduced by the open-ended reservation of
15 rights to pursue short sale negotiations. Debtors cannot force a short sale on Secured Creditor.
16 Any short sale proposed must be approved by Secured Creditor and the right to continue to seek
17 a voluntary loan modification must be cut-off at some point in time if the Debtors prove
18 ineligible for such relief.

19 WHEREFORE, Secured Creditor prays as follows:

20 (1) That the Court should not approve the disclosure statement unless amended so as to
21 confirm that no short sale can be forced on the Class 1aa claimant and to include a provision that
22 the Class 1aa Secured Creditor will continue to be free to exercise its remedies should the
23 Debtors not qualify for a voluntary loan modification;

1 (2) That the Debtor be directed to file and serve an amended disclosure statement to
2 address the defects with the documents in their present form;

3 (3) For such other relief as this Court deems proper.

4 MILES, BAUER, BERGSTROM & WINTERS, LLP

5 Dated: May 9, 2013

By: /s/ Mark T. Domeyer

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Attorney for Secured Creditor

(09-03784/ndmisc.dot/rma)